

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,293

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a sixty-one-year-old woman with a history of degenerative arthritis, irritable bowel syndrome, migraine headaches, and depression. She worked as a nurse until 1991, when she was terminated because her increasing anxiety and physical symptoms caused her to miss too much work. In the Spring of 1993, she took a sales job in a furniture store. Her employer there tolerated her frequent absences and essentially allowed her to set her own hours. The petitioner has not worked since the store went out of business in November, 1993.

Despite her various health problems the petitioner has sought medical treatment sparingly in the last several years. The petitioner explained that this was due to her limited financial resources and her conversion to Christian Science. The petitioner maintains, however, that if she obtains medicaid she will avail herself of mental health counseling.

The petitioner's arthritis was documented by an X-ray report from 1979. In July, 1993, a doctor who the petitioner was then seeing wrote that the petitioner had the following limitations: "no standing for more than 4 hrs. at a time due to joint pain in hips and ankles".

The more-recent medical records consist mainly of a psychological assessment and a physical evaluation, both of which were performed on a consultative basis in Fall, 1994, in connection with her concurrent claim for SSI disability.

The examining psychologist, while avoiding any comment as to the petitioner's ability to work,

described the petitioner's depression and problematic employment history and noted: "One wonders how (she) managed through all these years without having a referral for psychological services."

The consultative physician diagnosed the petitioner's problems as: "1. Migraine headache, 2. Chronic anxiety, (and) 3. Depression". Although the report of this examination also avoids commenting on the petitioner's ability to work⁽¹⁾ this physician, on November 7, 1994 filled out a GA eligibility form for the petitioner, in which he listed her problems as "irritable bowel, migraine, depression, and degenerative arthritis", and stated that she should be precluded from all work and training activities for one year, with the added comment: "Irritable bowel is very active. This and depression would preclude any employment".

Based on the above reports and the apparent veracity of the petitioner's description of her impairments⁽²⁾ it is found that the petitioner has been precluded from all work on a repetitive and sustained basis for at least the past year, and will most likely remain so until she is able to avail herself of psychological therapy.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, the petitioner's arthritis alone limits her to sedentary work.⁽³⁾ However, when coupled with the petitioner's chronic depression and anxiety, which in turn appear to exacerbate her migraines and bowel problems, it must be concluded that the petitioner is disabled from all work activity within the meaning of the above definition. The Department's decision is, therefore, reversed.

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1. It appears that DDS, for reasons that have long been unfathomable to the hearing officer, continues to instruct consultative examiners to refrain from such opinions.
2. At the hearing the Department declined the opportunity to examine the petitioner directly and to contact the consultative examiners for more information.
3. Under the regulations, given the petitioner's age of 61, unless it is found that the petitioner has "highly marketable" skills enabling her to adjust to a sedentary job, this alone would require a finding that the

petitioner is disabled. See 20 C.F.R. § 416.963(d).